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In Propria Persona

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re GERALD ARMSTRONG, Debtor	Case No. **95-10911 aj** Chapter 7 Adv. No. **95-1164** Trial Date: 2/13/96
CHURCH OF SCIENTOLOGY INTERNATIONAL, a California non-profit religious corporation, Plaintiff, v. GERALD ARMSTRONG, Defendant.	

DECLARATION OF GERALD ARMSTRONG IN SUPPORT OF EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME FOR HEARING ON MOTION FOR ORDER CONCERNING TRIAL TESTIMONY AND CONTINUING TRIAL AND IN SUPPORT OF MOTION FOR ORDER CONCERNING TRIAL TESTIMONY AND CONTINUING TRIAL

I, Gerald Armstrong, declare:

1. I have personal knowledge of the facts set forth in this declaration and could competently testify thereto if called as a witness. I am the defendant in this action and in the underlying action, Scientology v. Armstrong, Marin County Superior Court Case No. 157680 (the state case).

2. I am aware of this Court's order that filed papers not exceed 25 pages. These papers do exceed said number. I have spent a great deal of time to see if there is a way to comply with the Court's order and still file what should be filed and there is not. I ask therefore that the Court excuse my exceeding the page limit, or, in the alternative, that it delete any pages beyond what the Court needs to understand this situation sufficiently to make its reasoned rulings.

3. I have contacted a number of individuals who possess testimony essential to the defenses stated in my answer to Scientology's complaint herein. Four key witnesses have stated that they are unwilling to provide a declaration for my use at trial in this case because they fear retaliation by Scientology: attorneys Michael J. Flynn, attorney Joseph A. Yanny, Michael Douglas and Nancy Rodes. Another attorney, Graham E. Berry, said he was unable to provide a declaration because others in his law firm fear Scientology's retaliation.

4. Michael J. Flynn was my attorney throughout the litigation entitled Scientology v. Armstrong, Los Angeles Superior Court Case No. C 420153, and arranged the "settlement agreement" with Scientology which it seeks to enforce in the state action and which underlies this adversary proceeding. I have spoken to Mr. Flynn many times, advised him of this Court's order that trial testimony be by declaration, many times asked him for a declaration, and appealed to his former sense of justice, courage and truth. He says that he signed an "agreement" with Scientology to not represent or assist me, and that even though he acknowledges that such an "agreement" is illegal, Scientology will ruin his life again if he provides me

with a declaration. He says I must subpoena him to have his testimony for trial. He says that the years of threats and attacks by Scientology caused him deep spiritual suffering which profoundly altered his psyche.

5. Mr. Flynn will testify that he was subjected to Scientology's "fair game" doctrine and attacks from 1980 through 1986; that Scientology's "settlement agreements," which he presented to his approximately 20 clients to sign, were in exchange for Scientology's ending its "fair game" against him and promising to end fair game against everyone else; that he advised me that the conditions in the "settlement agreement" authorizing liquidated damages or prohibiting First Amendment activities were "not worth the paper they're printed on;" that he advised me that I could not contract away my Constitutional rights; that he advised me that what Scientology was paying me for in the settlement was my dismissal of my lawsuit and other claims against it; and that attacks by Scientology caused him deep spiritual suffering which profoundly altered his psyche. For a glimpse at the level of threat Scientology was in Mr. Flynn's life, see, e.g., US v. Kattar, 840 F.2d 118 where Scientology sought and bought false statements to implicate Mr. Flynn in the forgery of a $2,000,000.00 check. I was aware of many lawsuits and bar complaints brought by Scientology or its stooges against Mr. Flynn and his associates, and I knew from Mr. Flynn, having worked for over a year in his Boston office and supported him in the worldwide battle against Scientology's fair game litigation machine from 1981 through 1986, that he attributed an attempt on his life, terrible disruption to his marriage, threats to his law practice, unconscionable black PR, and relentless robotic attack

to the organization under its crazy, dangerous leaders.

6. "Fair game" is Scientology's philosophy and practice of opportunistic hatred. "Fair Game doctrine of the Church [] permits a suppressive person to be "tricked, sued or lied to or destroyed...[or] deprived of property or injured by any means by any Scientologist..." Scientology v. Armstrong, (1991) 232 Cal.App.3d 1060, 283 Cal.Rptr.917 at 920.

7. Joseph A. Yanny is an attorney who at one time in the 1980's represented Scientology and then became its fair game target. In 1991, because Scientology tricked Richard and Vicki Aznaran into firing Ford Greene, their attorney in Aznaran v. Scientology, US District Court for the Central District of California Case No. CV-88-1786-JMI(Ex), and then loaded up the record with a number of summary judgment or other dispositive motions, Mr. Yanny briefly came into the case to protect the Aznarans. While he was the attorney of record in Aznaran, Mr. Yanny called me and asked for my help. I executed a declaration to be filed in the Aznaran case at Mr. Yanny's request concerning the effect of the group "settlement agreements" on the ability of Scientology's victims to find legal representation.

8. On January 9, 1996 I wrote Mr. Yanny requesting a declaration to be used in my defense in this case. A true and correct copy of my letter is appended hereto as Exhibit A. When I later spoke with Mr. Yanny he advised me that because of the threat of attack by Scientology he could not provide a declaration, but I would have to subpoena him to testify at trial. Scientology had sued Mr. Yanny twice, alleging in the second lawsuit that he was representing me in litigation against the organization. Mr. Yanny had never represented me, and both

cases Scientology filed against him were dismissed by the presiding Court. Appended hereto as Exhibit B is a true and correct copy of the Second Appellate District opinion of June 29, 1994 affirming the dismissal of one of Scientology's lawsuits. At page 31, Justice Staniforth states "Such evidence leads to the conclusion that this proceeding was a device for destroying Yanny and any lawyers who chose to work with him. This appeal is the "Fair Game" of Scientology infamy at work." Scientology's lawsuit against Mr. Yanny, in which it falsely claimed that he was representing me, is mentioned at page 4, n.3. I do not have a copy of the opinion affirming the trial court's dismissal of that case.

9. Michael Douglas is a friend of mine and a former Scientologist. When I gave away my worldly wealth in 1990 I forgave a debt of approximately $80,000 that Mr. Douglas owed me. In December, 1986 Mr. Douglas signed a "settlement agreement" similar to the one Scientology is attempting to enforce against me. He is afraid of Scientology and states that he is unwilling to execute a declaration for my defense and that I would have to subpoena him to testify. He will testify that my forgiving his debt was not to render me judgment proof, but because I was motivated by a Higher Cause and that he is not "holding" any money for me. He will testify about his knowledge of fair game and his fear of being its target.

10. Nancy Rodes is a friend and former Scientologist, who also signed an "agreement" in December, 1986. She is afraid of Scientology and states that the organization will sue her as it did me if she provides me with a declaration for my defense in this case. She will testify if I subpoena her. She will testify

that Mr. Flynn advised her in order to get her to sign the "agreement" that the liquidated damages provision and conditions limiting her speech were "unenforceable."

11. Martin Samuels is also a friend and former Scientologist who signed a December, 1986 "agreement" and was also told by Flynn before signing that "it's not worth the paper it's printed on." Mr. Samuels states that he is afraid of attacks by Scientology and is unwilling to execute a declaration for my defense. He was a long time target of "fair game" and knowledgeable concerning organization operations and unethical litigation tactics.

12. Graham E. Berry is an attorney in Los Angeles who has litigated successfully against Scientology and is one of its present fair game targets. The organization's attacks on Mr. Berry are representative of what it does to this day to attorneys who dare to stand up to its litigation machine. It is my understanding that Scientology has been successful through threat in pressuring one or more of the senior attorneys in Mr. Berry's firm to prevent him from participating in Scientology-related litigations. He says that he is unable to provide a declaration for my defense, but will testify if subpoenaed.

13. Appended hereto as Exhibit C is a true and correct copy of my Motion for Reconsideration of Grant of Summary Adjudication as to Twentieth Cause of Action for Permanent Injunction filed November 16, 1995 in the state case. Among the arguments made in that motion is that "the instant injunction precludes Armstrong from representing himself in [this adversary proceeding] because he cannot talk to people about Scientology in order to obtain declarations in his own defense. Such is a denial of Armstrong's

First Amendment right to redress, Fifth and Fourteenth Amendment rights to due process and fair trial, and his Sixth Amendment rights to counsel and to confrontation." (Exhibit C at 13:4-7).

14. In his denial of the motion for reconsideration, the State Court Judge Gary W. Thomas stated:

> "Even if the Bankruptcy Court had not directed that testimony be via declaration, defendant would have had the same purported problem in obtaining direct testimony (i.e., he would have been unable to talk to people about Scientology in order to obtain direct testimony in his own defense. Even if the Court considers this argument, it has no merit in that defendant can ask people to submit declarations without discussing his views and beliefs about plaintiff." (Exhibit D)

Judge Thomas does not state what my views and beliefs about "Scientology" are, and the "permanent injunction" states nothing about my views and beliefs. It is, however, clear that Scientology will construe whatever I say to prospective witnesses to be my views and beliefs, and will use my contact of witnesses to attack me. Scientology has tried at least six times to have me found in contempt of court for my actions as innocent as answering the telephone at my job when a former Scientologist called, or on Scientology's own manufactured charges. I believe that Judge Thomas cannot legally prohibit me from defending myself in this case, nor prevent me from talking to witnesses to try to get them to testify in my defense. Indeed, my answer in this case contains some of my views and beliefs about "Scientology," and I have sent copies to various witnesses, as

shown in my letter to Mr. Yanny (Ex. A).

15. As Scientology says in its papers, Judge Thomas for some reason delayed signing the "final judgment" in the state case. Scientology has also advised me that it expects to receive a signed "final judgment" momentarily. When I receive such "final judgment" I will appeal it. I have spoken to many lawyers concerning Scientology's attacks, the orders it has been able to obtain from Judge Thomas, and the appeal from such orders. I believe I will be able to obtain legal help in my appeal, I believe it will be successful, and I believe that the "settlement agreement" will be adjudged to have been obtained by duress and fraud and to be illegal and unenforceable.

16. When I filed my bankruptcy petition in April, 1995 I did so on the advise of my lawyer who said that it was the only way to prevent Scientology from taking what little I owned, including my bicycle and clothing, as a result of the claimed award of $100,000.00 in Judge Thomas's grant of summary adjudication of two causes of action on January 27, 1995 (see order appended to the declaration of Andrew Wilson.) My lawyer also said that the January 27 ruling was unappealable because it was not a final judgment. The "final judgment" granted by Judge Thomas is appealable.

I declare under the penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed on January 25, 1996 at San Anselmo, California.

Gerald Armstrong

January 9, 1996

Joseph A. Yanny, Esquire
1925 Century Park East, Suite 1260
Los Angeles, CA 90067

Re: **Scientology v. Armstrong**
US Bankruptcy Court
Northern District of California
No. 95-1164

Dear Joe:

Enclosed are:

1. Scientology's complaint objecting to discharge;

2. My second amended answer to Scientology's complaint;

3. Order of Bankruptcy Court filed 10/10/95 re trial testimony.

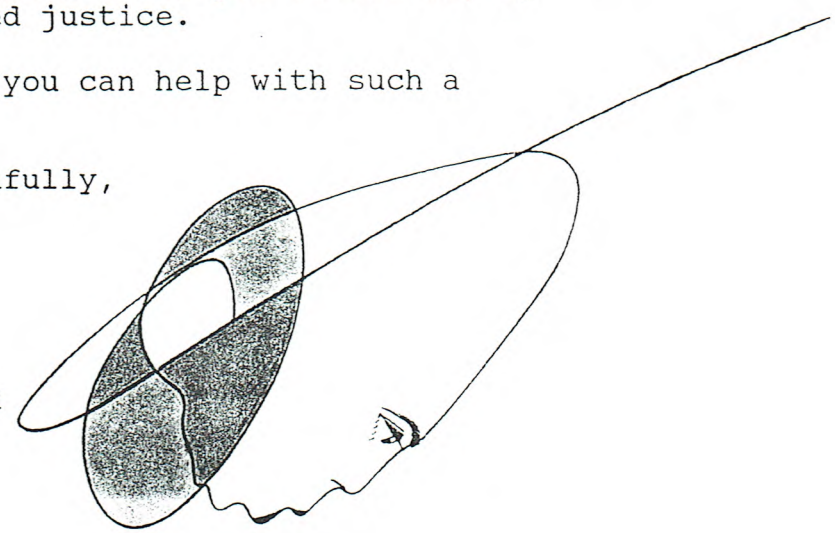
Trial is set for February 13, 1996.

I would like to get a declaration from you rebutting Scientology's charges that I "intended to breach" the "settlement contract" from the outset, that my breaches were "malicious" and that I "set out on a course of conduct intended deliberately to damage and harass" it, etc. (complaint at, e.g., 2:16-20; 11:1-8).

In that you called me while you were attorney of record in the Aznaran case and asked for my help, my response to your request for help is something different from "deliberate and malicious." (complaint at 11:14-15) Given what Scientology had done which brought you into the Aznaran case, the time pressure they put you under which made subpoenaing me impossible, and that I had no knowledge of the situation until you called me, my actions were innocent and served justice.

Let me know right away if you can help with such a declaration.

Yours faithfully,



Gerry Armstrong
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(415)456-8450
Enclosures ~~(4)~~ 3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

RELIGIOUS TECHNOLOGY CENTER, a California non-profit religious corporation; CHURCH OF SCIENTOLOGY INTERNATIONAL, a California non-profit religious corporation; and CHURCH OF SCIENTOLOGY OF CALIFORNIA, A California non-profit religious corporation. Plaintiffs and Appellants, v. JOSEPH A. YANNY, an individual, and JOSEPH A. Yanny, a professional Law Corporation. Defendants and Respondents.	No. B058291 (Super. Ct. No. C690211)

APPEAL from judgments of the Superior Court of Los Angeles County. Raymond Cardenas, Judge. Affirmed.

William T. Drescher, attorney for Plaintiffs and Appellants, Religious Technology Center; Eric M. Lieberman et al., attorneys for Plaintiffs and Appellants, Church of Scientology International.

Lewis, D'Amato, Brisbois & Bisgaard; David B. Parker, Jayesh Patel, Matthew D. Berger, Joseph A. Yanny, attorneys for Defendants and Respondents Joseph A Yanny, et al.

STANIFORTH, J., Dissenting:

The plaintiffs (appellants) are the Religious Technology Center ("RTC")[1] Church of Scientology of California ("CSC"), (collectively, Scientology) brought this action against their former attorney Joseph A. Yanny (Yanny)[2] seeking a permanent injunction and damages. Yanny by cross-complaint sought payment for legal services rendered Scientology Churches. The trial commenced before a jury. Four weeks into the jury trial Scientology waived their damages claim, whereupon the trial was bifurcated. The jury was to determine the legal issues (Yanny's cross-complaint) and the equitable issue (injunctive relief) was to be determined by the court.

Scientology's complaint against Yanny and members of his firm was for breach of fiduciary duty, breach of contract, tortious breach of the covenant of good faith and fair dealing, constructive fraud, fraud, intentional interference with contract, civil conspiracy and

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[1] RTC has been joined in this brief by the other two plaintiffs-appellants, Church of Scientology of California ("CSC") and Church of Scientology International ("CSI"). RTC, CSC and CSI are collectively referred to hereafter as "Appellants" or "Scientology."

[2] Also named as defendants were several associates who had worked for Yanny during the relevant time, including Richard Wynne, Lisa Wilske, Mary Grieco, and Karen McRae, counsel to an individual, Vicki Aznaran.

conversion. Scientology charged, among other things, that Yanny was orchestrating a number of lawsuits against them. Yanny cross-complained for the legal fees owed him.

After a 41-day trial (3 months) the jury awarded Yanny $154,000 damages as attorney fees owed. After hearing the equitable claims the trial court denied injunctive relief. Scientology appeals the adverse judgments.

CONTENTIONS

Scientology contends Yanny and his counsel, Van Sickle, were guilty of deliberate pervasive misconduct so prejudicial as to require reversal; that the trial court failed to instruct as to willful suppression of evidence; and there is a lack of substantial evidence to support the jury award to Yanny. Finally it is urged the trial court erred in refusing to enjoin Yanny from "continuing to aid litigation adversaries in substantially related matters" to his previous employment as attorney for Scientology.

PROCEEDINGS BELOW

Scientology's complaint (filed June 1988, amended August 1988) charged Yanny and his professional corporation and associates with submitting false or inflated bills and thus breach of contract (second cause of action) and

engaged in fraud (fourth cause of action). Plaintiffs also charged Yanny, as well as Herzig & Yanny, with conversion based on their failure to return, among other items, the $150,000 retainer paid Yanny (ninth cause of action), and with fraud for having knowingly made false representations as to Yanny's responsibility for papers served but not filed in a lawsuit in which Yanny represented RTC (sixth cause of action).[3]

On August 4, 1988, the court entered a preliminary injunction prohibiting Yanny, Wynne, and McRae from disclosing or encouraging the disclosure of confidences obtained during their attorney-client relationship with plaintiffs.[4]

In February 1989, Yanny, filed a cross-complaint against Scientology. Yanny charged Scientology had not paid a bill submitted in January 1988 for the period

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[3] The legal issues submitted in this appeal are no different to those briefed in Scientology's second lawsuit against respondent Yanny. This was a later filed lawsuit, briefed before this particular appeal. Respondents request this court to take judicial notice of this case in the Second Appellate District, Division III, case No. B068261, an appeal from the judgment of a Superior Court of California, County of Los Angeles, case No. BC033035.

[4] This preliminary injunction was based upon the sworn testimony of two persons who were later, upon trial, found not worthy of belief.

October through December 1987 for legal services and expenses. He also asserted causes of action for breach of contract (first cause of action), for account stated (second cause of action), for work, labor and services (third cause of action), and for book account (fourth cause of action). In addition, Yanny alleged a cause of action for quantum merit for $10,500,000, on the ground that plaintiffs had purportedly been unjustly enriched by this sum. The reasonable value of the cross-claimants' services were sought (fifth cause of action). Finally, Yanny claimed that plaintiff exploited him in breach of their covenant of good faith and fair dealing (sixth cause of action). Yanny's plaintiff cross-complaint sought both compensatory and punitive damages.

FACTS

We accept the trial court summary of the evidence relevant to the injunctive issues. These findings are supported by substantial evidence.

The trial court found:

> "An attorney-client relationship existed between Yanny on the one hand and plaintiffs on another giving rise to certain fiduciary, contractual and ethical duties which Yanny continued to owe to plaintiffs after the attorney-client relationship terminated."

"The evidence admitted at trial established that after plaintiffs and Yanny became involved in a dispute over attorney's fees and also the $150,000.00 retainer [the jury found that the retainer was not refundable], plaintiffs' agents Marty Rathbun and attorney Earle Cooley questioned Yanny's integrity and reputation and attacked his motives by attempting to convince Vicki Aznaran not to assist Yanny in any way. As provided in Case Law and the Evidence Code, such conduct by plaintiffs, acting through their agents, partially waived the attorney-client privilege which existed and allowed Yanny to act to protect his interest with respect to his legal reputation and his right to receive payment for legal services rendered in 1987-1988, and to establish his right to the $150,000.00 retainer. At the outset, therefore, plaintiffs waived their right that Yanny not breach the duty of confidentiality or loyalty with respect to matters and confidences that were relevant to the legal dispute between the parties. There was no waiver with respect to confidences unrelated to the dispute.

"The evidence admitted at trial with respect to Yanny established the following:

"(a) Yanny allowed his friends, the Aznarans and Karen McRae, to stay at his house for a period varying between one and two weeks in the latter part of March 1988;

"(b) Yanny discussed Scientology doctrines and listened as Vicki Aznaran (former president of RTC) and Richard Aznaran told of their mistreatment by plaintiffs while he (Yanny) was seeking evidence in support of his claims against plaintiffs. As for the alleged breach of confidences, <u>there is insufficient evidence to prove that Yanny disclosed a client's confidences or secrets</u>. Much has been made about Yanny's knowledge of Scientology's litigation strategies and

weaknesses; however, there was insufficient proof that Yanny disclosed and then held secrets. The evidence disclosed that litigation strategies and weaknesses of plaintiffs were well known to Vicki Aznaran, former President of RTC. Moreover, it was evident (from the evidence) that 'many members of the firm were aware of and familiar with the Wollersheim v. Scientology case which published those things that plaintiffs contend were secret litigation weakness and tactics.'"

"The court was asked to accept the often conflicting and highly impeached testimony of Dorothy Peti as it related to Yanny's conversations with the Aznarans, McRae, Bent Corydon, Lisa Wilske and Mary Grieco at the Hermosa Beach gatherings in March 1988. The court finds that Dorothy Peti's testimony lacked the credibility necessary to support a court's finding that Yanny, Wynne and McRae individually or jointly violated duties owed to plaintiffs." [5]

"Yanny inquired into the ethical questions raised by his possible representation of the Aznarans against plaintiffs, but concluded, for various reasons, that he would not represent the Aznarans. The evidence established that while Yanny may have indicated that he felt he could represent the Aznarans, he elected not to do so. Even if he had, such representation would not have necessarily resulted in a breach of Yanny's ethical obligations, as adverse representation is permissible under certain conditions. (Wutchumna Water Co. v. Bailey (1932) 216 Cal. 564.)"

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[5] A dispassionate reading of the Dorothy Peti's testimony points directly to the falsity of Scientology's claims of Yanny "revealing" any "secrets" of Scientology. There is a strong suspicion that Peti was a "plant," a spy on behalf of Scientology. She reported directly to the Scientology attorneys.

> "Yanny assisted the Aznarans in their search for experienced counsel to represent them against plaintiffs."

The court found that Yanny's assistance in this regard including transporting the Aznarans to other attorneys' offices did not constitute a breach of duties owed plaintiffs. There was insufficient evidence to establish that Yanny rendered legal assistance to any prospective attorneys.

The court concluded:

> "Yanny was and is an aggressive attorney who is apparently driven by an all-consuming desire to right the wrongs that he believes plaintiffs have committed over the years with respect to him and others. It is this state of mind that blurs his objectivity and has caused Yanny to appear to lose sight of his continuing professional responsibility to the plaintiffs, his former clients--a duty of confidentiality which he will bear so long as he is an attorney. Although Yanny's conduct suggests a ready willingness to disregard legal and ethical responsibilities owed to his former clients, <u>the fact is that plaintiffs failed to prove the allegations of the complaint and did not establish by the evidence the necessary prerequisites for the issuance of permanent injunction</u>."

Scientology's "undisputed facts" were not accepted by the trial court. More than substantial evidence supports the trial court's denial of injunctive

relief. A dispassionate reading of the reporter's transcript cited by Scientology leads to these conclusions: (1) There was no evidence presented of Yanny entering into any representation of any person, any prospective adversary to Scientology; (2) There is a total lack of evidence that Yanny breached any particular or general fiduciary duties of confidentiality and loyalty owed to his former client.

I

DISCUSSION

Concerning the standard of appellate review of disqualification proceedings this court said in H.F. Ahmanson & Co. v. Salomon Brothers, Inc. & Co., supra, 229 Cal.App.3d 1445 at p. 1451: "In our review of disqualification motions, as elsewhere, the judgment of the lower court is presumed correct and all intendments and presumptions are indulged to support it on matters as to which the record is silent. (Centinela Hospital Ass. v. City of Inglewood (1990) 225 Cal.App.3d 1586.) Conflicts in the declarations are resolved in favor of the prevailing party and the trial court's resolution of factual issues arising from competing declarations is conclusive on the reviewing court. [Citations.]"

See also In re Marriage of Zimmerman (1993) 16 Cal.App.4th 556, 561-562; In re Complex Asbestos Litigation, 232 Cal.App.3d 572, 667, 671; Higdon v. Superior Court, 227 Cal.App.3d 1667, 1671.

II

This court in H. F. Ahmanson & Co. v. Salomon Brothers, Inc., supra, 229 Cal.App.3d 1445, 1451 stated:

> "It is beyond dispute a court may disqualify an attorney from representing a client with interests adverse of a former client. (Wutchumna Water Co. v. Bailey (1932) 216 Cal. 564, 573-574; Gregori v. Bank of America (1989) 207 Cal.App.3d 291, 298.) In re Marriage of Zimmerman , supra, 16 Cal.App.4th 556, 562-563, disqualification in cases of successive representation is based on the prohibition against 'employment adverse to a . . . former client where, by reason of the representation of the . . . former client, the [attorney] has obtained confidential information material to the employment. . . .'" (Rule 3-310, Rules Prof. Conduct [23 West's Ann. Civ. & Crim. court Rules, pt. 2 (1990 Supp.) p. 445; Deering's Ann. Rules of Court (1991 pocket pt.) p. 19].)

Scientology cites a host of cases holding the fiduciary duties of an attorney include the obligation to refrain from aiding parties with interests adverse to the interests of the attorney's former clients in matters

which are substantially related to matters the attorney handled in representing the former clients. (See, e.g., People ex rel. Deukmejian v. Brown, 41 Cal.3d 150, 156-57; Western Continental Operating Co. v. Natural Gas Corp. (1989) 212 Cal.App.3d 752, 758-60; In re Jessica B. (1989) 207 Cal.App.3d 504, 511-12; River West, Inc. v. Nickel, supra, 188 Cal.App.3d 1297, 1302-04; Elliott v. McFarland Unified School District (1985) 165 Cal.App.3d 562, 568-70; Civil Service Commission v. Superior Court (1984) 163 Cal.App.3d 70, 79-81; Dill v. Superior Court (1984) 158 Cal.App.3d 301, 304-305; Woods v. Superior Court (1983) 149 Cal.App.3d 931, 934-35.)

None of these cases are in point. There is no evidence whatsoever that Yanny represents any former client with an interest adversed to those of Scientology. This rule therefore has no application here. The evidence is without contradiction, Yanny determined after examination and consideration not to represent any prospective client in a suit against Scientology. Nor is there any evidence of any threat to represent anyone in an unspecified future litigation against Scientology.

III

The rule against disclosure of confidential information extends beyond representing a client in an action against a former client. "He may not do anything which will injuriously affect his former client in any manner . . . nor may he at any time use against his former clients knowledge of information acquired by virtue of the previous relationship." (Wutchumna Water Co. v. Bailey, supra, 216 Cal. 564, 573-574; Grove v. Grove Valve & Regulator Co. (1963) 213 Cal.App.2d 646, 650-651; Marriage of Zimmerman, supra 16 Cal.App.4th 556, 562 and cases cited therein.)

No evidence was presented to the trial court to suggest that Yanny was revealing "secrets learned in representing Scientology" to anyone. The record is bare of facts to support application of the broader rules cited above. Scientology recognizes its difficult factual problem, admitting:

> "In this case, an entirely different--and unique -- circumstance was presented. Yanny had not made an appearance as counsel of record in any of the actions in which he was aiding adverse litigants. Instead, all of his efforts were made behind the scenes, hidden from the Churches. This placed the Churches in an extremely difficult and unenviable position. Obtaining Yanny's

> disqualification in each of a series of cases while he was disclaiming any role, would have been virtually impossible. First, it is unclear whether a court would have jurisdiction to disqualify an attorney who has made no appearance and denies playing any role in the litigation. Second, proof of Yanny's involvement on a case-by-case basis would, practically speaking, have been impossible. Disqualification orders, moreover, would have been largely useless in any case since by the time the Churches discovered his involvement in a case and moved to disqualify the damage would already have been done. [¶] The Churches' only hope for obtaining effective relief was thus to seek general injunctive relief ordering a halt to his improper conduct precisely what the Churches did here."

In Scientology's attempt to get evidence of Yanny's disclosure of secrets, Scientology relied upon witnesses Dorothy Cota and Thomas Vallier. Cota reported to Scientology attorneys her attendance of meetings where Scientology claims "secrets" were disclosed. An examination of her testimony shows no support for Scientology's factual contention. The trial court found her testimony "highly impeached" and "lacked credibility." The second witness offering testimony to "secrets" disclosed was Thomas Vallier. The trial court found Vallier's testimony "not credible, not supported by other evidence."

A former client's claim of attorney disloyalty, absent any proof of disclosure of confidences, is not actionable. Scientology does not cite a single case to support its legal factual position. Scientology's reliance on disqualification cases do not give life to their cause of action here. As stated in a leading national treatise on attorney malpractice, 1 Mallen & Mith, Legal Malpractice (3d Ed.) at page 804:

> "There must be an actual fiduciary breach which caused real damages. Thus, the 'substantial relationship' between subject matters of representation must be reality and involve actual adversity. A cause of action is not established by showing that the attorney had access to confidential information or that the representation was adverse. The former client must establish not only that the attorney possessed and misused the client's confidences, but also that the fiduciary breach was a proximate cause of injury. (See Stockton Theaters Inc. v. Palermo (1953) 121 Cal.App.2d 616.) (Emphasis added.)"

Scientology was required to prove its claim factually before either injunction or damage relief could be awarded. In these critical requirements Scientology has abjectly failed.

IV

The trial court held it "lacks jurisdiction" to limit the practice of law other than on a case by case basis. The trial judge stated:

> "Although the evidence established no breach by defendants the court further declines to issue an injunction against Yanny and Wynne (California Lawyers) because the Supreme Court of California is the only State Court which can regulate the general practice of law and is the only body which can discipline or disbar attorneys (Jacobs v. State Bar (1977) 20 Cal.3d 191, Business and Professions Code 6100). It belabors the obvious to state that this court cannot regulate the practice of law in any federal court.
>
> "No case previously cited by plaintiffs supports the position that this court can prospectively limit the ability of two attorneys in the instant action to practice law."

Scientology has yet to tender such a case. The judge's decision is in complete conformity with binding California authorities. It could not enjoin Yanny and associates from the practice of law.

In re Complex Asbestos Litigation, supra, 232 Cal.App.3d 572, 600-601, the appeal court set forth the "jurisdiction limits" on the power to disqualify counsel stating at pp. 600-601:

> "The power to disqualify an attorney, as we stated above, derives from the court's inherent power to control the conduct of persons 'in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.' (Code Civ. Proc., § 128, subd. (a)(5); [citation].) This does not mean that a superior court has any inherent or statutory power to control the conduct of persons in judicial proceedings pending before a different superior court. One court may not interfere with the process of another court of equal jurisdiction in a case properly before the latter. [Citations.]"

The trial court's negation of any right or authority to disqualify counsel as to and future representation was correct law yet the rule has no application here. No representation of an adverse party has been shown or threatened.

V

Scientology next contends the misconduct of Yanny and his counsel throughout the trial was deliberate and pervasive and so prejudicial as to compel reversal. When such a charge is made we examine the contention in the light of these basic principles. In Dominquez v. Pantalone (1989) 212 Cal.App.3d 201, 210-211, this court quoted the here relevant statements of the California Supreme Court in Tingley v. Times Mirror (1907) 151 Cal. 1, 23:

"As the [California] Supreme Court noted nearly eighty years ago '[i]t rarely occurs in any case which is of moment and sharply contested that counsel on both sides in their zeal and partisan devotion to their clients do not indulge in arguments, remarks, insinuations, or suggestions which find neither support in, nor are referable or applicable to the testimony, or warranted by any fair theory upon which the case is being presented. If such impropriety of counsel always afforded ground for a new trial, there would be little prospects of any litigation becoming finally determined. It is only when the conduct of counsel consists of a willful or persistent effort to place before a jury clearly incompetent evidence, or the statement or remarks of counsel are of such a character as to manifest a design on his part to awake the resentment of the jury, to excite their prejudices or passion against the opposite party, or to enlist their sympathies in favor of his client or against the causes of his adversary, and the instructions of the court to the jury to disregard such offered evidence or objectionable remarks of course could not serve to remove the effect or cure the evil, that prejudicial error is committed. It is only extreme cases that the court, when acting promptly and speaking clearly and directly on the subject, cannot, by instructing the jury to disregard such matters, correct the impropriety of the act of counsel and remove any effect his conduct or remarks would otherwise have. (Tingley v. Times Mirror (1907) 151 Cal. 1, 23.)'"

In Menasco v. Snyder (1984) 157 Cal.App.3d 729, 732 the appellate court said:

> "In assessing that prejudice, each case ultimately must rest upon this court's view of the overall record, taking into account such factors, inter alia, as the nature and seriousness of the remarks and misconduct, the general atmosphere, including the judge's control of the trial, the likelihood of prejudicing the jury, and the efficacy of objection or admonition under all the circumstances. (See also Simmons v. Southern Pac. Transportation Co. (1976) 62 Cal.App.3d 341, 351.)"

Finally, and applicable to the facts here, the Menasco court stated at page 733:

> "A claim of misconduct is entitled to no consideration on appeal unless the record shows a timely and proper objection and a request that the jury be admonished."

Because the effect of misconduct can ordinarily be removed by an instruction to the jury to disregard it, it is generally essential in order that an act of misconduct be subject to review on appeal, that it be called to the attention of the trial court at the time to give the court an opportunity to so act, if possible as to correct the error and avoid a mistrial. Only misconduct so prejudicial that as admonishment would be ineffective excuses the failure to request such admonishment. (Whitfield v. Roth, 10 Cal.3d 874, 892.) (Emphasis mine.)

VI

The list of purported misconduct is attached as an additional "appendix" to Scientology's Opening Brief. In thirty-seven of those listed instances of purported misconduct, Scientology made no objection at all.[6] Twenty-two of the Scientology objections listed in the "appendix" were specifically overruled by the trial court.[7] More significantly, twenty-seven of those instances cited in Scientology's "appendix" took place during the examination of Yanny, when he was on the stand. He had been specifically excluded by the trial court from participating in side bar conferences. Yanny had no way of knowing the substance of the trial court's decision at side-bar during his examination and the limits it might have imposed on his testimony.

---

[6] The following is a partial list: Reporters Transcript: 362-63, 365, 382-83, 589-90, 1123, 1125, 1202, 1223, 1319-20, 1725-26, 1795-96, 1931, 2008-09, 2105-06, 2107-08, 2246-47, 2257, 2484, 2568-69, 2707, 2856, 2861-62, 2929, 2931-32, 2969-70, 273-74, 2976-77, 2981, 2996-97, 3006-07. These examples were taken from Scientology's "appendix."

[7] The following is a partial list: Reporters transcript: 436, 438-39, 591, 924-25, 967-68, 989, 1120-21, 1208, 1235-36, 1313-14, 1777-78, 1779-80, 1924-25, 1984-85, 2011-12, 2107, 2149-50, 2154-55, 2199-2201, 2993. These examples were taken from Scientology's "appendix" of purported misconduct.

When objections were sustained, during the over one-and-a-half month jury trial, the trial court followed, when necessary, with an admonition that sought to clarify that matters being discussed were allegations, rather than facts.

VII

A fair and dispassionate reading of the record does not support Scientology's charge. This was a hard fought lawsuit. Scientology at long last concedes the trial was "hotly contested". In this legal "hardball" Scientology gave a great many more causes to complain than did Yanny's counsel. The tone and flavor of Scientology counsel's conduct (Cooley) appears in the opening statement and continues into his final argument. In his opening statement Cooley represented he would prove:

> "Approximately 40 to 60 percent of the $2,300,000 represented fraudulent billing [by Yanny].
>
> "There are basically two parts to this case, the betraying of client confidences, the aiding, counseling and assisting of adversaries. That's one side. And the other, the fraudulent billing.
>
> "These three entities come before you not to present any form of ecclesiastical dispute, but they come before you as clients of a lawyer. They come before you presenting to

> you a claim that their lawyer to whom they paid $2,300,000 has betrayed them and gouged them, and they ask you to focus your attention--
>
> "MR. SAYERS: Your Honor, I'm going to object to this is argument and I'd ask that the jury be instructed to disregard these comments.
>
> "THE COURT: I'll ask the jury to disregard it."

Cooley continued his not to be factually supported diatribe:

> "The evidence will show that he has become the field general for the main litigation involving adversaries of the church, these three entities. . . ."

Counsel's statements of evidence to be offered should be presented in good faith. Many of Cooley's statements were totally unsupported by evidence produced at trial.

Scientology witnesses gratuitously volunteered unsupported statements of Yanny's marital infidelities.

> "Q. Do you recall what Mr. Yanny said with respect to Ms. Aznaran's relationship to that retainer?
>
> "A. He said he owed everything to Vicki Aznaran, and that if it weren't for Scientology ethics he would like to sleep with her.

"MR. SAYERS: Objection. Move to strike. That's irrelevant and highly prejudicial.

"THE COURT: Overruled. Motion to strike denied.

[SCIENTOLOGY ATTORNEY]: This is a further example.

"MR. DRESCHER: Your Honor, I'd object to Mr. Yanny's gratuitous remark and ask that it be stricken.

"THE COURT: Overruled. The jury is asked to disregard any comment made by the lawyer.

"THE WITNESS: I don't think it's proper to sleep with a law clerk in your office a month after you've married your wife and she's working in the office." (Emphasis mine.)

These gratuitous, irrelevant factually unsupported statements continued into the final argument [by Cooley] when he said:

"Good morning. [¶] Mr. Van Sickle's final argument was based, I think, upon a technique more appropriate to a propaganda ministry than to a courtroom. His strategy obviously was to equate things that, in fact, are irrelevant to each other, and then to lump the entire story into a great big generality which he gave his own theological spin by repeating to you over and over again.

"So what. So What. Big deal. Word games.

"So what that Yanny ripped plaintiffs off for thousands upon thousands of dollars. Nobody's perfect.

"So what that neither of the defendants' only two witnesses, Yanny and Vicki Aznaran, could get their story straight, even when they spent the night together before one of them testified.

"So what that the fictitious documents that Yanny claims support his position never even existed.

"So what that Yanny dreamed up a nonexistent agreement, one-page agreement written by a dead man which Mr. Van Sickle now wants you to ignore.

"So what that Yanny claims to have cut the deal for the $150,000 retainer at a meeting that never happened in a restaurant Vicki Aznaran never visited with people who were never there.

"The so what is that a witness, and particularly a lawyer, who is supposed to honor and serve the judicial process, has a sacred duty not to give false testimony and not to procure false testimony from that witness stand, and to treat his clients with honesty and fairness and not to take advantage of their trust in him by defrauding them.

"As part of his effort to reduce Yanny's enormous wrongdoing to a so what or big deal status, Mr. Van Sickle characterizes specific items that have been proven as part of the overall fraud, which even by his calculations come to $50,000, that's pocket change, and nickels and dimes not worthy of your consideration.

"Mr. Van Sickle, thus announces a new rule; the law according to Yanny. It's okay to steal $50,000 because it's not really a lot of money to these plaintiffs. I say to you, it is a lot of money. Furthermore, it's solid

> evidence of the overall fraud that Yanny had in his heart and it defines what Yanny is, and serves as one of the many building blocks on which we ask you to base the overall case of fraud, treachery and deceit.
>
> "According to Mr. Van Sickle, all of the witnesses against Yanny are blind and cannot see the elephant. Jacobs is blind, Grabowski is blind, Todd Serota's blind, Warren McShane, Paul Schroer, Doreen Hackett, Eva Raber, Tom Vallier, Marty Rathbun and Dorothy Peti, all blind. None of them can see the elephants, according to Mr. Van Sickle. They feel the tail and think it's a rope and want to hang Yanny with it.
>
> "I would suggest to you that there are so many people who have testified here to fundamentally the same thing that they have correctly identified not only the tail but the trunk, tusk, head, ears, body, and that the elephant has taken shape, and has trampled Yanny's thick of lies."

Neither the judge nor the jury accepted these statements as fact as demonstrated by the jury verdict in favor of Yanny and the court's decision denying injunctive relief to Scientology.

In many instances, Scientology induced the commission of the conduct now claimed to be Yanny's misconduct. In such case Scientology is estopped from asserting any induced, alleged, misconduct as a ground for reversal. (9 B.E. Witkin, California Procedure: Appeal § 301 et seq. [3d Ed., 1985, Supp. 1992].) One of the major

issues of purported misconduct cited by Scientology, was Yanny's reference to the Wollersheim verdict. This verdict was in evidence, having been introduced by Scientology itself as Exhibit 61. This is invited error or waiver. (Gunch v. Fieg (1913) 164 Cal. 429, 333.)

Finally, regardless of whether the trial court overruled or sustained the objections, over seventy instances of purported misconduct cited by Scientology are based on objections where there is no certification of the grounds for objecting whether as to the form or the substance of the question. These various examples cited by Scientology, do not meet the standard to constitute lawyer misconduct. There is no basis for reversal shown in this record.

VIII

Scientology next contends the trial court's failure to instruct the jury as to willful suppression of evidence is reversible error. Two issues are raised. Was the refusal erroneous and if error, prejudicial? Scientology has the burden of proof on both issues. (Null v. City of Los Angeles (1988) 206 Cal.App.3d 1528, 1532.) The court in place of the requested instruction gave a broader alternate instruction as follows:

"If weaker or less satisfactory evidence is offered by a party when it was within his power to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

"In determining what inferences to draw from the evidence, you may consider, among other things, a party's failure to explain or to deny such evidence."

A litigant is entitled to instructions on every theory advanced by him which finds support in the evidence. (Phillips v. G. L. Truman Excavation Co. (1961) 55 cal.2d 801, 806; Daniels v. City of County of San Francisco (1953) 40 Cal.2d 614, 623.) But the precise instruction requested is not required in every instance. The instruction actually given had not only covered Scientology's theory of willful suppression but also covered other theories favorable to Scientology. Scientology's theory was adequately covered by the instruction given. (See Williams v. Carl Karcher Enterprises Inc. (1986) 182 Cal.App.3d 479, 487.) If it be assumed that the broader instruction given was not sufficient yet no prejudice is shown. The evidence was in conflict as to what was contained in the non produced documents. The jury chose to believe Yanny's witnesses. There was no evidence of Yanny's willful suppression of any documents.

IX

Scientology contends that the jury verdict on the cross-complaint is not supported by substantial evidence. Scientology's quarrel is with the substantial evidence rule:

> "It is fundamental that the trial court's [or jury's] factual findings will be reversed on appeal only when they are not supported by substantial evidence. (In re Marriage of Mix (1975) 14 Cal.3d 604, 614; Stevens v. Parke, Davis & Co (1975) 9 Cal.3d 51, 64.) In applying the substantial evidence test, the court views the evidence in the light most favorable to respondent (Nestle v. City of Santa Monica (1972) 6 Cal.3d 920), accepting as true respondent's evidence resolving all conflicts in respondent's favor, and drawing such favorable inferences as may be drawn from the evidence. (Hasson v. Ford Motor Co. (1977) 19 Cal.3d 530, 544.)"

We may quickly dispose of Scientology's claims that the evidence was insufficient to support the judgment. We do not reweigh the evidence on appeal, but rather determine after resolving all conflicts favorable to the prevailing party whether there is substantial evidence.

We find here there is substantial believable evidence of Yanny's contract to perform legal services for Scientology and there is evidence of his performance of the contract and Scientology's breach. Scientology refused to pay for services rendered to Yanny's damages. Yanny was

hired by RTC president Vicki Aznaras. He was retained at a non-refundable $150,000 retainer. The contract was admitted. The Scientology's witness McShane admits the final bill submitted by Yanny was unpaid. The services rendered by Yanny were complex and extensive in nature. It was only after Yanny expressed his disagreement with certain Scientology practices and policies did Scientology question any bills submitted. There is more than substantial evidence to support the jury verdict and the trial court's denial of injunctive relief. Each must be affirmed.

X

DISPOSITION IN RE SANCTIONS

This is a case that warrants the imposition of sanctions upon Scientology under Code of Civil Procedure section 907 as well as upon Scientology's attorney William T. Drescher and Eric M. Lieberman. Respondents Mary Grieco and Richard Wynne have been sued without cause, put to the expense of a three month trial and to this lengthy appeal. On this appeal Scientology does not even mention Mary Grieco. Richard Wynne is mentioned only once in a footnote in an unrelated matter.

After 41 days of trial--three months out of the life of Yanny, Grieco, Wynne and McRae, Scientology

produced an enormous amount of time consuming legal froth--no substance, no lawful basis, for any relief. Scientology witnesses swore under penalty of perjury to "facts" that formed the basis of the issuance of the temporary restraining order here in the injunction. When tested in open court these witnesses were found not worthy of belief. There is a strong suspicion that one of these witnesses, Dorothy Cole, was a plant, a spy placed by Scientology in Yanny's employ. The declarations under oath by Yanny, Grieco and Wynne support the conclusion that a series of illegal pressures were sought to be placed on these parties; that an attempt at subordination of perjury was made. A review of this record as a whole leads to this conclusion. This appeal court and the trial court below was used as a means in Scientology's pursuit of the "fair game," policy of punishing those who leave Scientology without Scientology's approval. This appears to be a continuation of the fair games procedure of Scientology to discredit and to destroy and ruin an adversary by whatever means available. (See Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1067; Wollershein v. Church of Scientology of Calif., supra, 212 Cal.App.3d 872, 888, 891-895; Allard v. Church of Scientology of Calif. (1976)

58 Cal.App.3d 439, 444.)

The prime issue in this trial was credibility. Scientology witnesses totally failed to establish the requisite facts necessary to judgments in their favor. The evidence of the "fair game policy" and its application was relevant.

Scientology failed to adequately designate the record on appeal (Cal. Rules of Court, § 5.1). Scientology does not give this court the necessary record in order to determine their contentions of error in the jury verdict. This neglect prevents this court to reach the merits of the issues raised.

Neither Scientology nor its lawyers offer any justification for the prosecution of this appeal against Mary A. Greco or Richard Wynne. There is no legal or factual basis to find any error in the judgments in favor of these individuals.

Scientology at long last concedes (as is apparent from the face of the record) that the trial was "hotly contested." The record and the jury verdict and court decision reflect a rejection of the unsupported slanderous statements and legal deficiencies of Scientology's positions taken.

Scientology and counsel have failed to respond to or refute misleading arguments made on this appeal. (See fns. 7 and 8, supra.) The same issues and arguments presented on this appeal were made--unsuccessfully--before Division Three of this court in case No. B068216 (see fn. 3, supra).

Scientology and counsel have urged on this appellate court law having no relevancy whatsoever. This case does not involve a lawyer representation of a client against a former client after termination of that attorney client relationship. Further, the law relevant to a "breach of loyalty" absent facts to show a disclosure of confidence has no application whatsoever. Three times Scientology and its lawyers have pushed these inapposite legal arguments without success. The high point in evidence offered was rejected by the trial court as not worthy of belief. This was an appeal on unproved--rejected as false--facts. This appeal and its delays and total lack of merit must be viewed in conjunction with the other groundless similar lawsuit pursued against Yanny. Such evidence leads to the conclusion that this proceeding was a device for destroying Yanny and any lawyers who chose to work with him. This appeal is the "Fair Game" of Scientology infamy at work.

This appeal has been delayed unreasonably due to Scientology's failure to perform requisite acts to perfect an appeal. There were violations of numerous rules of court. The notice of appeal was filed April 23, 1991 and designation of the reporters record made on May 9, 1991. It was not until September of 1992 that Scientology paid the estimated costs of completing the reporters transcript. Failure to do so for over one year caused this court to make its own motion to dismiss. Numerous other delaying tactics appear in this record.

XI

THE LAW IN RE SANCTIONS ON APPEAL

Code of Civil Procedure section 907 provides:

> "When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just." (See also Rule 26(a).)

An appeal taken for an improper motive represents a time-consuming and disruptive use of the judicial process. Similarly, an appeal taken despite the fact that no reasonable attorney could have thought it meritorious ties up judicial resources and diverts attention from the burdensome volume of work at the appellate courts. An

appeal should be held to be frivolous only when, as here, it is prosecuted for an improper motive--to harass the respondent or delay the effect of an adverse judgment--or where it indisputably has no merit--when any reasonable attorney would agree that the appeal is totally and completely without merit. (In re Marriage of Flaherty (1982) 31 Cal.3d 637, 650.)

Pursuant to rule 26(a), this court may impose upon offending attorneys or parties such penalties "as the circumstances of the case and the discouragement of like conduct in the future may require." (Italics added.)

Preliminarily, I note that because of due process considerations, "Penalties for prosecuting frivolous appeals should not be imposed without giving fair warning, affording the attorney an opportunity to respond to the charge, and holding a hearing. Further, when imposing sanctions, the court should provide the attorney with a written statement of the reasons for the penalty." (In re Marriage of Flaherty, supra, 31 Cal.3d at p. 654.) These due process requirements have been more than met here.

It is pointed out in Bank of California v. Varikin, 216 Cal.App.3d 1630, 1636, respondents are:

". . . [N]ot the only parties damaged when an appellant pursues a frivolous claim. Other appellate parties, many of whom wait years for a resolution of bona fide disputes, are prejudiced by the useless diversion of this court's attention. (Martineau, Frivolous Appeals: The Uncertain Federal Response (1984) Duke L.J. 845, 848 & fn. 18.) In the same vein, the appellate system and the taxpayers of this state are damaged by what amounts to a waste of this court's time and resources. (See generally Bennett v. Unger (1969) 272 Cal.App.2d 202, 211; cf. Cann, Frivolous Lawsuits--The Lawyer's Duty to Say 'No' (1981) 52 U.Colo. L.Rev. 367, 368-369 [discussing the social cost of frivolous appeals].) Accordingly, an appropriate measure of sanctions should also compensate the government for its expense in processing, reviewing and deciding a frivolous appeal. (Bennett v. Unger, supra, 272 Cal.App.2d at p. 211; Eisenberg, [Sanctions on Appeal: A Survey and a Proposal for Computation Guidelines (1985)] 20 U.S.F. L.Rev. [13]; Young v. Rosanthal, 212 Cal.App.3d 96, 133.)"

In Young v. Rosenthal, supra, at page 134, the court held:

"In determining the appropriate relief, the underlying policy of Code of Civil Procedure section 907 should control. 'The object of imposing a penalty for frivolous appeal is twofold--to discourage the same, as well as to compensate to some extent for the loss which results from the delay. . . . [¶] In determining the amount . . . in this case for a frivolous appeal we should consider the facts with relation thereto and the effect of the delay.' (Huber v. Shedoudy (1919) 180 Cal. 311, 316-317; see also Kim v. Walker (1989) 208 Cal.3d 375, 384-385.)"

"In this case, such sanctions are most properly measured by the reasonable attorneys' fees incurred by CEH in responding to Rosenthal's appeals."

Review of the record and briefs filed including specific declarations as to time spent and applicable hourly rates, I conclude the amount of attorneys fees reasonably incurred in defense of this appeal by Yanny, Greco and Wynne, is the sum of $63,387.50 plus costs involved of $14,441.60 or a total of $77,829.10.

XII

SANCTIONS PAYABLE TO THE COURT

The handling of this case has imposed a lengthy and arduous burden upon the court. Numerous briefs, procedural motions precedes the oral argument in this case. I place the fault for imposing this burden on the legal system upon Scientology and counsel. This was a time-consuming, costly and frivolous appeal. The taxpayers of the state have been harmed by a wasteful diversion of their appellate court limited resources. The appropriate measure of sanctions should compensate the State of California for its processing, reviewing and deciding this frivolous appeal. This court is aware of the normal average cost of handling

an appeal in this Second District of the Court of Appeal (see Young v. Rosenthal, supra, 212 Cal.App.3d at pp. 136-137), but I am also painfully aware that that is not an average case.

I conclude the cost incurred by the State of California due to this frivolous appeal is the sum of $25,000. Appellant Religious Technology Center, a California non-profit religious corporation; Church of Scientology International, a California non-profit religious corporation; and Church of Scientology of California, A California non-profit religious corporation and their attorneys William T. Drescher and Eric M. Lieberman are jointly and severally liable to Joseph A. Yanny and Mary A. Greco and Richard Wynne for the total sum of $77,829.10.

Appellants and named attorneys should be directed to pay the further sum, as a joint and several obligation, of $25,000 to the clerk of the court as a further sanction.

The judgment is affirmed in all respects. Costs on appeal are awarded to respondents.

NOT TO BE PUBLISHED.

STANIFORTH, J.*

*Assigned by the Chairperson of the Judicial Council.

LILLIE, P.J. and JOHNSON, J., Concurring and Dissenting:

We concur in Parts I - IX of our colleague's opinion but depart from him on the issue of appellate sanctions (Parts X - XII). We do not find the issues on appeal to be so devoid of merit as to qualify as frivolous under the standard enunciated in In re Marriage of Flaherty (1982) 31 Cal.3d 637, 650. Nor do we find sufficient evidence independent of the relative merit of the issues raised on appeal to conclude the appeal was "taken solely for delay." (Code Civ. Proc., § 907.) Accordingly, we are unwilling to impose monetary sanctions on appeal either in favor of the court or of respondents.

As a result of our decision on this issue, the disposition of this case does not include any direction to appellants or their attorneys to pay respondents the monetary sanctions on appeal discussed in our colleague's opinion or to pay monetary sanctions to the State of California. However, we do deem it appropriate to require appellants to pay respondents' costs on appeal. Thus, the disposition of this appeal is as set forth in the paragraph below.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondents.

NOT TO BE PUBLISHED.

LILLIE, P.J.

I concur:

JOHNSON, J.

COPY

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(SPACE BELOW PROVIDED FOR FILING STAMP ONLY)

FILED
NOV 16 1995
HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

RECEIVED
NOV 16 1995
HUB LAW OFFICES

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; DOES 1 through 100, inclusive,

Defendants.

No. 157 680

ARMSTRONG'S AMENDED NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF GRANT OF SUMMARY ADJUDICATION AS TO TWENTIETH CAUSE OF ACTION FOR PERMANENT INJUNCTION; POINTS AND AUTHORITIES; DECLARATION OF FORD GREENE

Date: 12/1/95
Time: 9:00 a.m.
Dept: One

TO ALL PARTIES AND TO THEIR COUNSEL:

PLEASE TAKE NOTICE that on December 1, 1995, at 9:00 a.m. in Department One of the above-entitled Court, or as soon thereafter as the matter can be heard, defendant Gerald Armstrong will move this court for an Order reconsidering its grant of summary adjudication as to the twentieth cause of action of the first amended complaint.

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This motion is brought pursuant to C.C.P. § 1008 and is based on the fact that the Court's grant of summary adjudication is patently erroneous and unfair and that newly discovered evidence increases said unfairness.

DATED: November 16, 1995

HUB LAW OFFICES

By: _____
FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION

I. INTRODUCTION

On a motion for summary adjudication, it is improper for a Court in an exercise of its equity power, to grant a permanent injunction based solely on the content of Armstrong's speech as an "apostate" criticizing what he sees as the immorality of his former religion, while ignoring the fact that Scientology's attorney testified that both parties intended to maintain strict silence about the other?

II. STATEMENT OF FACTS

In response to defendant's argument that the meaning of the contract included an obligation by Scientology to maintain silence with respect to Armstrong (Reporter's Transcript, "RT", Exhibit A to Greene Decl. At 2:15-3:27, 4:15-5:26, 7:1-8:25, 9:14-10:24, 11:19-12:22)[1], the court asserted that it was not required to consider such evidence.

> "Yes, but the facts, those facts are not relevant, and when one reads Witkin, and you can read it, One Witkin Summary of California Law, it's in section [6]84, page 617, the rules of interpretation of written contracts are for the purpose of ascertaining the meaning of the words used therein. Evidence cannot be admitted to show intention independent of the instrument. The words are clear."

(RT 13:2-9)

The court also stated its ruling was based on the following:

> "... the papers submitted has the Los Angeles Superior Court Order. You've referred to Los Angeles and what has taken place there. The Order says, the quote is, the agree terms are clear and unambiguous. The cross-complainant understood, that's your client, understood the terms and signed it. The duties, objections, obligations of agreement are clearly stated. Mutuality and reciprocal duties cannot be read into the unambiguous terms of the agreement. There are no provisions in the agreement prohibiting the cross-defendant from referring to cross-complainant with the press or in legal pleadings or declarations."

---

[1] Scientology attorney Lawrence Heller, who is the representative of Scientology depicted on the videotape of Armstrong's signing of the agreement, advised one court in 1989 in a motion to quash a deposition subpena served on Gerald Armstrong (that was based on the agreement) that he "was personally involved in the [1986] settlement" and stated under oath "The non-disclosure obligations were a key part of the settlement agreements insisted upon by all parties involved." (Armstrong's Separate Statement in Opposition to Summary Adjudication on Twentieth Cause of Action at ¶ 101) He further stated, "One of the key ingredients to completing these settlements, insisted upon by all parties involved, was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences with the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners." (*Id.* at ¶ 102) When Heller spoke to Armstrong on November 20, 1989, Heller stated that Scientology had obligations of non-disclosure as well as Armstrong. (*Id.* at ¶ 103)

(RT 8:25-9:8) [2]

Based on the foregoing reasons, in derogation of California law, the court refused to consider attorney Heller's testimony. Such refusal was legally improper.

III. THE COURT MUST CONSIDER THE HELLER DECLARATION WHICH RAISES TRIABLE ISSUES AS TO WHETHER THE AGREEMENT WAS INTEGRATED AND AS TO THE PARTIES INTENT THAT THE GAG PROVISIONS WERE RECIPROCAL

> "Under California law, '[t]he test of admissibility of intrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the contract is reasonably susceptible.' *Thomas Drayage*, 69 Cal.Rptr. at 564, 442 P.2d at 644. Thus, even if a contract appears to be absolutely clear on its face, the court is required to engage in preliminary consideration of extrinsic evidence to see whether it creates an ambiguity. However, if the extrinsic evidence advances an interpretation to which the contract is not reasonably susceptible, the extrinsic evidence is not admissible. [citation] Further, the mere existence of intrinsic evidence supporting an alternative meaning does not foreclose summary judgment where the extrinsic evidence is insufficient to render the contract susceptible to the non-movant's proffered interpretation. [citation]."

Barris Industries, Inc. v. Worldvision Enterprises, Inc. (9th Cir. 1989) 875 F.2d 1446, 1450 citing *P.G. & E. v. G.W. Thomas Drayage* (1968) 69 Cal.2d 33, 39-40; *Aragon-Haas v. Family Security Insurance Services, Inc.* (1991) 231 Cal.App.3d 232, 240; Witkin, California Evidence, Vol. 2, pp 920-923, § 975-977, pp. 929-934, § 983-986.

In addition to Heller's sworn representations that the reciprocal intent of the parties was to maintain reciprocal silence, Armstrong relies on Scientology's breaches of its obligation to maintain such silence as to Armstrong as excusing him from having to comply with the same requirement as to it. (Separate Statement ¶ 105) [3]

Thus, given the fact that CSI's own attorney has stated that the intent of the parties was to remain mutually silent about one another, a "germ of a potential ... defense" has been raised sufficient to defeat

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[2] Yet another judge who construed the agreement stated, "So my belief is Judge Breckenridge, being a very careful judge ... if he had been presented with that whole agreement and if he had been asked to order its performance, he would have dug his feet in because that is one ... I'll say one of the most ambiguous, one-sided agreements that I have ever read. And I would have not ordered the enforcement of hardly any of the terms if I had been asked to, even on the threat that okay, the case is not settled. [¶] I know we like to settle cases. But we don't like to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest." (*Id.* at ¶ 120)

[3] Among other things, after the settlement, Scientology stated that Armstrong was a perjuror, contemnor, and admitted agent provacteur of the United States Government. (Separate Statement, ¶ 105 (E).

summary adjudication. *Jos. Schlitz Brewing Co. v. Downey Distributor* (1980) 109 Cal.App.3d 908, 917; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 39.

Most importantly, Heller's contradictory statements also implicate important public policy considerations as to the integrity of the judiciary and the lawyers who practice within it. Recently, the Second District Court of Appeal applied principles regarding stipulated reversals of judgment to a civil compromise that affected the right of the state to conduct a criminal prosecution. It stated that "When a court determines that a contract is contrary to public policy, it has a duty to refrain from allowing parties to maintain an action based on that contract. *Bovard v. American Horse Enterprises* (1988) 201 Cal.App.3d 832, 838." *People v. Eisenberg* (November 7, 1995) 95 C.D.O.S. 8643, 8644. As in *Eisenberg,* principles regarding stipulated reversals of judgment to a civil compromise are instructive in this case as well.

> The public interest exception to the presumption that requests for stipulated reversal will be granted cannot be defined by formula, though it will be more likely preesent when the judgment in question involves important public rights, unfair, illegal, or corrupt practices, or torts affecting a significant number of persons. Whether a stipulated reversal would deprive the public of an important benefit must in every case be determined "'from a realistic assessment of all the pertinent circumstances.' [Citation.]" (*California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 745

Norman I. Krug Real Estate v. Praszker (1994) 22 Cal.App.4th 1814, 821.

That the public has an interest in the integrity of the judicial system cannot be disputed. *River West, Inc. V. Nickel* (1987) 188 Cal.App.3d 1297, 1306 ["The preservation of public trust both in the scrupulous administration of justice and in the integrity of the bar is paramount ... public's interest in an untainted judicial system."]

The settlement agreement at issue, by itself, "involves important public rights, unfair, illegal, or corrupt practices, or torts affecting a significant number of persons," but more importantly because it is <u>one component</u> of a poly-dimensional effort by Scientology to buy its way out of accountability for the consequences of its conduct driven by its Fair Game Doctrine. Thus, the agreement violates the "first principle that the people have the right to know what is done in their courts." *Church of Scientology v. Armstrong* (1991) 232 Cal.App.3d 1060, 1068.

In the initial litigation between Armstrong and Scientology, Judge Paul G. Breckenridge, Jr., specifically found the Scientology organization to be malevolent, in part because the organization "or its minions is fully capable of intimidation [of witnesses, including Armstrong] or other physical or psychological

abuse if it suits their ends." (Armstrong's Separate Statement at ¶ 1 (A), Ex. 1 (A) at 8:3-6. He further provided the following factual findings, inter alia, regarding Scientology:

> In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to extract a maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to detect lies, its own particular phraseology . .), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect." [footnote omitted] From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn.
>
> In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization is clearly schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH [L. Ron Hubbard]. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile.

Id. at 8:7-9:4. (Emphasis added.)

In contrast to his findings regarding Scientology, Judge Breckenridge found Armstrong and his witnesses to be credible and sympathetic. He wrote:

> As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Homer Schomer to be credible, extremely persuasive and the defense of privilege or justification established and corroborated by this evidence . . . In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved [with the highest echelons of power in] the Scientology Organization, is on one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH [L. Ron. Hubbard], and his ideas. Each has manifested a waste and loss or frustration which is incapable of description.

Id. at 7:9-26. (Emphasis added.)

Since the scope of the settlement agreements' gag provisions specifically included Nancy Dincalci (now Nancy Rodes), Kima Douglas, Laurel Sullivan, and Howard Schomer. (Scientology's Exhibit 1 (B)), it becomes clear that Scientology was seeking to buy its way out of the conclusion that Judge Breckenridge had rendered with respect to its nature and credibility, and to eliminate such persons from ready availability as witnesses in future litigation. The nature of the settlement agreement iS further clarified by looking at its requirements that Armstrong forbear from participating in Scientology's appeal of Judge Breckenridge's opinion (Scientology's Exhibit 1 (A) at ¶ 4-B), assist in its effort to obtain return of documents in *United States*

v. Zolin, [4] and in, furtherance of the gag provisions, to avoid service of process. (Scientology's Exhibit 1 (A) at ¶ 7H.)

Judge Breckenridge's decision was not an isolated abberation. Scientology has a long history of tortious and criminal behavior. [5] With this judicial context, it is inconceivable that there is no question of fact

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[4] *United States v. Zolin*, then Case No. CV 85-0440-HLH (Tx) in the U.S. District Court, Central District of California, which on December 6, 1986 (the date of settlement), was on appeal before the Ninth Circuit. *Armstrong I* was ultimately a subject centrally involved in the Supreme Court opinion reported in *United States v. Zolin* (1989) 109 S.Ct. 2619, 105 L.Ed.2d 469.

Zolin arose from an investigation of L. Ron Hubbard, founder of the Church of Scientology, by Criminal Investigation Division of the Internal Revenue Service ("CID/IRS"). *Id.* 105 L.Ed.2d at 480. In the course of its investigation, the CID/IRS sought access to 49 documents, including two most important tape recordings, that had been filed under seal in *Armstrong I*. *Id.* 105 L.Ed.2d at 481. Scientology sought to block CID/IRS access to the documents in *Armstrong I* by asserting the attorney-client privilege as a basis for injunctive relief obtained in the United States District Court for the Central District of California. Citing the crime-fraud exception to the privilege, the CID/IRS opposed. The District Court upheld the privilege. On appeal the Ninth Circuit affirmed. *Id.* 105 L.Ed.2d at 481-83. The United States Supreme Court addressed whether the attorney-client privilege between Scientology and some of its attorneys should be abrogated on the basis "that the legal service was sought or obtained in order to enable or aid the client to commit or plan to commit a crime or tort." *Id.* at 105 L.Ed.2d at 489. In *Zolin,* the Supreme Court reversed the Ninth Circuit's ruling, in *United States v. Zolin* (9th Cir. 1987) 809 F.2d 1411, that the Government had not made a sufficient showing that there had been "illegal advice . . . given by [Scientology] attorneys to [Scientology] officials" to invoke the crime-fraud exception to the attorney-client privilege. Upon reversing and remanding, the Supreme Court ordered the Ninth Circuit to review partial transcripts of the tape recordings sought by the IRS in the criminal investigation of Scientology to determine whether the crime-fraud exception to the privilege applied. On remand, the Ninth Circuit held:

> **The partial transcripts demonstrate that the purpose of the [Mission Corporate Category Sort Out] project was to cover up past criminal wrongdoing. The MCCS project involved the discussion and planning for future frauds against the IRS, in violation of 18 U.S.C. ¶ 371. [citation.] The figures involved in MCCS admit on the tapes that they are attempting to confuse and defraud the U.S. Government. The purpose of the crime-fraud exception is to exclude such transactions from the protection of the attorney-client privilege.**

United States v. Zolin (1990) 905 F.2d 1344, 1345 (emphasis added.).

Pursuant to Paragraph 7E(c) of the settlement agreement specifically addressing the MCCS tapes in *Zolin,* the Scientology Organization required Armstrong to "assist [the Scientology Organization] in recovering these documents as quickly as possible, including but not limited to these tapes."

[5] *Allard v. Church of Scientology* (1976) 58 Cal.App.3d 439, 443, fn. 1, 447 [Fair Game means "that person 'may be deprived of property or injured by any means by any Scientologist without discipline of the Scientologist. May be tricked, sued or lied to or destroyed.' ... Evidence of such policy statements were damaging to [the Church of Scientology], but they were entirely relevant. They were not prejudicial. A party whose reprehensible acts are the cause of harm to another and the reason for the lawsuit by the other cannot be heard to complain that its conduct is so bad that it should not be disclosed." Practice of Fair Game resulted in setting enemy up for criminal conviction.] *Wollersheim v. Church of Scientology of California* (1989) 212 Cal.App.3d 872, 881-891 [Fair Game was modren-day "Christian inquisition" intended to "neutralize" adversary by stripping him of economic and psychological resources.]; *United States v. Kattar* (1st Cir. 1988) 849 F.2d 118, 125-126 [In the late 1970s, the United States successfully prosecuted a number of high-level Scientologist operatives for various crimes involving illegal break-ins, burglaries and wire taps ... The Church according to the U.S. Attorney, 'launched vicious smear campaigns against those perceived to be enemies of Scientology.' The Church's methods for this included subornation of perjury. The memo also

(continued...)

on the issue that Scienbtology's intention as to the settlement agreement at issue was to "buy [its] way out" *People v. Eisenberg* (November 7, 1995) 95 C.D.O.S. 8643, 8644 quoting *Norman I. Krug Real Estate v. Praszker* (1994) 22 Cal.App.4th at 1823, of having to be accountable for the consequences of its conduct with respect to those whom it had in the past, and would in the future, victimize pursuant to its Fair Game Doctrine.

Under this view, the $800,000 that Scientology paid to Armstrong to dismiss his cross-complaint and maintain silence is not a barometer of the depth of Armstrong's disregard of his word to stick to the settlement. [6] It is a barometer of the value which Scientology placed on the suppression of Armstrong's testimony which was "credible, extremely persuasive and ... corroborated by this evidence . . . In all critical and important matters, . . . was precise, accurate, and rang true" regarding a criminal organization. [7] For this Court to particpate in such a corrupt scheme has "dangerous public policy implications" *Ibid.* because the events set forth above "tend to undermine individual security, personal liberty, or private property, or injure the public or the public good." *Church of Scientology v. Armstrong, supra.* 232 Cal.App.3d at 1068. One result is that "public court business is conducted in private [and then] it becomes impossible to expose

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[5](...continued)
acknowledged the existence of the Fair Game Doctrine as the active animating philosophy of the Church."]; *Church of Scientology v. Commissioner* (1984) 83 U.S. Tax Ct. Rpts. 381, 429-442 ["Petitioner [Church of Scientology of California], its agents, and others willfully and knowingly conspired to defraud the United States ... In pursuit of the conspiracy, petitioner filed false tax returns, burglarized IRS offices, stole IRS documents, and harassed, delayed, and obstructed IRS agents who tried to audit the Church's records. Petitioner gave false information to and concealed relevant information from the IRS about its corporate structure ..."]; *United States v. Hubbard* (D.C. 1979) 474 F.Supp. 64, 70-77, 79, 83-84.

[6] As Armstrong's evidence has illustrated (Separate Statement at ¶¶ 106, 154, 155), he did keep his word for years until Scientology's betrayal of their promises became completely intolerable.

[7] The nature of Scientology continues to be judicially recognized as a live public controversy of great importance. In his Memorandum Opinion, United States District Court Senior Judge John L. Kane Jr. in *Religious Technology Center v. F.A.C.T.NET, INC.; Lawrence Wollersheim and Robert Penny*, United States District Court for the District of Colorado, Case No. 95-K-2143, filed October 3, 1995, found that

> "The alleged copying by the Defendants was not of a commercial nature. Rather, it was for the non-profit purposes to advance understanding of issues concerning the Church which are the subject of on-going public controversy. ... [U] Defendants maintain and the evidence does not refute that the Lerma postings to the Internet were made in the context of ongoing dialogue in the particular newsgroup to which they were posted. [T]hey form part of the topical debate concerning whether the Works are of substance or are perpetuated as part of systemic mind control. ... As such, the postings may well be considered as having been made for the purposes of criticism, comment or research falling within the fair use doctrine"

Exhibit B, to Greene Decl.)

corruption, incompetence, inefficiency, prejudice, and favoritism." *Ibid.*

Scientology's litigation practices bring the question of judicial corruption into high relief.

On November 14, 1995, in *Church of Scientology International v. Time Warner, Inc.; Time Inc. Magazine Company, and Richard Behar*, the United States District Court, Southern District of New York, Case No. 92 Civ. 30324 (PKL) the court granted summary judgment in favor of Time Magazine as to the following statements:

> In reality the church is a hugely profitable global racket that survives by intimidating members and critics in a Mafia-like manner."
>
> "Says Cynthia Kisser, the [Cult Awareness] network's Chicago-based executive director" 'Scientology is quite likely the most ruthless, the most classically, terroristic, the most litigous cult the country has ever seen. No cult extracts more money from its members.'"
>
> "Those who criticise the church – journalists, doctors, lawyers and even judges so often find themselves engulfed in litigation, stalked by private eyes, framed for fictional crimes, beaten up or threatened with death."

(Exhibit C to Greene Decl. At pp. 7)

In the most stark and blatant terms, this Court has made a judgment call on the facts by regarding Armstrong's veracity and character when it argues or factually concludes that Armstrong has engaged in "double-speak." [8] The judgment call that the Court has made has the most profound impact which stampedes on constitutional rights upon which the public good, trust and interest is necessarily predicated.

IV. THE INJUNCTION VIOLATES THE FIRST AMENDMENT

The inappropriateness of the court's injunction is dramatically underscored by what the court has enjoined: Armstrong's exercise of his right as an apostate to criticize his former religion while his former religion not only assails his reputation and character, but also his Christianist religious beliefs. The court's injunction forces Armstrong, upon penalty of imprisonment, to maintain abject silence in the face of a Scientologist attack upon the root's of Armstrong's Christianist beliefs. Such violates two constitutionally

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[8] It upsets Armstrong greatly that the court refers to him in Orwellian terms as having engaged in "double speak." (RT 4:6) Not only is a credibility determination inappropriate on a motion for summary adjudication, *AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1064, said characterization reflects a lack of understanding by the court of the facts. If the contradictory statements of attorney Heller are considered, there is a "germ of a defense" and a factual issue that Armstrong has not engaged in "double speak" at all. Rather, Scientology is engaged in a gargantuan effort to perpetrate a massive fraud on the American Court and the American People. See, discussion of the November 14, 1995 grant of summary judgment on behalf of Time *in Church of Scientology International v. Time Warner, Inc.; Time Inc. Magazine Company; and Richard Behar, infra.*

essential principles.

Justice Brandeis best articulated the value of free speech as the necessary predicate and intelligent core of constitutional liberty in his famous concurrence in *Whitney v. California* (1927) 274 U.S. 357, 375:

> "[The Framers of the Constitution] believed the freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law - the argument of force in its worst form."

Justice Cardozo referred to freedom of speech as "the matrix, the indispenible condition, of nearly every other form of freedom." *Palko v. Connecticut* (1937) 302 U.S. 319, 327.

> [The First] Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public ...

Citizen Publishing Co. V. United States (1969) 394 U.S. 131, 139-140. The reason for protecting the free flow of information is that "[o]ur system of government requires that we have faith in the ability of the individual to decide wisely, if only he is fully apprised of the merits of a controversy." *Eisenstadt v. Baird* (1972) 405 U.S. 438, 457 (Douglas, J., concurring.)

> "... above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. [Citation.] To permit the continued building of our politics and culture, and to assure self-fulfillment for each individual, our people are guaranteed the right to express any thought, free from government censorship. The essence of this forbidden censorship is content control. Any restriction on expressive activity because of its content would completely undercut the 'profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open.' [Citation.]"

Police Department v. Mosley (1972) 408 U.S. 92, 95-96.

The court's injunction violates the public interest, and eviscerates its own ability to fulfill its purpose - the ascertainment of truth. It asserts the Power of Government upon Armstrong to restrain him from participating in discussion of "noxious doctrine," which is "silence coerced by law – the argument of force in its worst form." *Whitney*, 274 U.S. at 375-376.

There is a "germ of a defense" that the instant setttlement agreement violates the public interest because it allows Scientology to "buy its way out" of accountability for the consequences of acting out its Fair

Game Doctrine which can have a devastating impact on"important public rights, unfair, illegal, or corrupt practices, or torts affecting a significant number of persons." Money, even $800,000, cannot be allowed to buy this. If it is, the true doublespeak will be "Justice." Because Scientology is able to "buy away" the legacy of its evil conduct, and continue to use the judicial system as a tool of the destruction of its enemies, Justice will have become Injustice. Such is the irony and the mistake of the Court's injunction. As a matter of law, this enforcement of this contract, by this organization against Armstrong, or any other person, is wrong and cannot be enforced in the way that this Court is enforcing it.

The Court prohibits Armstrong not only from discussing his pre-December 1986 first-hand knowledge of Scientology as a former Scientologist. It prevents him from even partaking in the current raging public controversy on whether Scientology is good or bad, a religion or a cult, a helper or a predator of mankind. He cannot read a newspaper article in the day's paper and discuss the article with another customer while at a coffee house. [9] He cannot possess the article, or even the published opinion.

In addition to the injunction constituting a most egregious prior restraint on pure speech, the nature of the speech which it impacts, is subject to additional First Amendment protection because it is of an independantly religious nature. Armstrong is a Christianist who believes in God and in Jesus and in the Bible. (Separate Statement at ¶ 147, 157, 159)

Although Scientology pays lip service to being compatible with Christianist teachings, (Separate Statement at ¶¶ 160-161), it is anti-christian. (*Id.* At ¶ 162.) Having been secretly taught, an initiated Scientologist beleives that "Christ, God and Heaven are false ideas 'implanted' in humans by electronic means to enslave them." (*Id.* At ¶ 163) Scientology secretly teaches its adherents that its "auditing" procedures are the only way to free mankind from "Christian" slavery and the "Creator of Heaven." (*Id.* At ¶ 164.) Scientology enforces acceptance of its teachings that Christ, God and Heaven are false "implanted" ideas with Scientology's system of "ethics" punishments, its "auditing procedures," and its institutionalized mockery of God and Christ. Any person in Scientology who professed a belief in Christ, or God, or who

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[9] For example, if Armstrong is in San Anselmo drinking coffee tomorrow morning and reads about most of Scientology's case against Time Magazine, he cannot turn to his neighbor and "That's a good decision!" without risking contempt and jail of this Court's injunction. Neither could Armstrong use Time Magazine's May 6, 1991 article as material for discussion with his fellow citizens without running afoul of "silence coerced by law – the argument of force in its worst form." (A copy of the articule, "Scientology: The Cult of Greed" is attached to the Greene Decl. As Exhibit D.

sought help through prayer, was viewed and handled as a "psychotic." (*Idl.* At ¶ 166) As a Christianist, Armstrong believes that this "blasphemes the Holy Spirit, the one unforgiveable sin." (*Id.* At ¶ 167-169.) There are others who share Armstrong's beliefs. (*Id* at ¶ 169-172.)

Speech about religion is speech entitled to the general protections of the First Amendment. This includes descriptions of religious experiences. *Widmar v. Vincent* (1981) 454 U.S. 263, 269, fn. 6.

> "In the realm of religious faith, and in that of political belief, sharp differecnces arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excessess and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democrary."

Cantwell v. Connecticut (1940) 310 U.S. 296, 310.

Armstrong beleives that God has sent him to help the "little people" whom Scientology "persecutes." (Separate Statement at ¶¶ 173-175) "It is a function of speech to free men from the bondage of irrational fears." *Whitney, supra.*, 274 U.S. at 376. Thus, to enforce the Scientologist view while prohibiting any expression of the counterbalancing Christianist view, violates Armstrong's right to freely exercise his religion, even if the sum total of that religion is to register his public dissent to the conduct taken in furtherance of the Fair Game Doctrine.

> "Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard. [¶] It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

West Virginia State Board of Education v. Barnette (1943) 319 U.S. 624, 641.

Armstrong's views on Scientology were sufficiently supported by evidence and conceptually powerful to convince Judge Breckenridge to make the conclusions he did about Scientology. Even if Armstrong's view were to be relegated to the realm of what is eccentric rather than what is effective, the First Amendment would still compel protection against the Court's prior restraint of his speech.

> We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

Id. At 641-642.

Armstrong's position does go to the heart of the existing order because he asserts that no amount of money, not even $1 million, can buy the truth. He says the First Amendment is not for sale. [10]

The Fourteenth Amendment supports Armstrong's position.

> The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. ... freedoms of speech and of press, of assembly, and of worship may not be infringed on ... slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect.

Id. 319 U.S. at 639. Armstrong engaging in religious speech regarding Scientology presents no " grave and immediate danger" to the State's interest. The only value which supports the injunction is the right to contract. While not to be belittled, such right is also not ultimate.

Just because citizens contracted to purchase homes with the express covenant that said home would never be sold to Africans was insufficient to enforce such racially restrictive covenants. *Shelley v. Kraemer* (1948) 334 U.S. 1. Judicial action is state action and therefore subject to the requirements of the Fourteenth Amednment. *Id.* At 14-18. Just as Black and White people stand equally before the law, so does the Scientologist and the Christianist. The Scientologist cannot use the law to strip the Christianist of his First Amendment Rights without running afoul of the First and Fourteenth Amendments.

All of the speech which the court has ordered repressed is religious in nature because the content of such speech is the criticism of the Scientology religion and its leaders by Armstrong. (Separate Statement ¶138-175) Such prior restraint puts Armstrong in the position that while Scientology may lie about Armstrong to the public, if he in response tells the truth about Scientology, Scientology will have this court jail him for contempt of court. It is the greatest irony that Scientology, a tax-exempt organization that is supposed to

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[10] The Court's reliance on *ITT Telecom Products Corp. v. Dooley* (1989) 214 Cal.App.3d 307, 319 is misplaced. If there had been no agreement between the parties, as testified to by Scientology's attorney Heller, that each side would maintain silence about the other, and Armstrong had voluntarily, knowingly and intelligently agreed that Scientology could say whatever it wanted about him, and that if he said anything back he could be sued, enjoined and jailed, the agreement perhaps could be enforced if Armstrong was competent to enter into such an agreement. Since there is competent evidence from attorney Heller, for the purposes of summary judgment the Court cannot conclude that there is no triable issue whether or not Armstrong's purported waiver of his First Amendment rights was constitutional. Since, however, there is such a triable issue, summary judgment, particularly on an equitable cause of action for a permanent injunction silencing Armstrong is notably without adequate legal basis.

benefit the public, has obtained a court order to silence the words of a former member who warns the public of the danger it presents. Such would be a denial of equal protection of the law, not to mention a violation of the First Amendment's establishment clause.

In order to pass muster under the First Amendment's estasblishment clause, the governmental action must pass a three-pronged test.

> "First the [governmental order] must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion ...; finally the [order] must not foster an excessive governmental entanglement with religion."

Lemon v. Kurtzman (1971) 403 U.S. 602, 612-613. Failure of state action to satisfy any one of the criteria requires invalidation. *Edwards v. Aguillard* (1987) 482 U.S. 578, 583. "[G]overnment cannot exert its authority in the domain of religious conviction. Government may not convey any message of 'endorsement or disapproval' of religious activity, or use its 'power [or] prestige ... to control, support or influence' any matter of religious faith." *United Christian Scientists v. First Church of Christ* (1987) 829 F.2d 1152, 1161-1162.

The injunction fails the last two prongs of this test. The order advances Scientology's religious purpose while its inhibits Armstrong's. It furthers Scientology's Fair Game Doctrine, allowing it to lie about Armstrong, and inhibits Armstrong's dedication to the truth by silencing him in the face of such lies. The order allows Scientology to propagate its belief that God and Jesus aremplants" to enslave man, while at the same time it censors Armstrong's belief that such is blasphemy.

Finally, the order constitutes an excessive entanglement because if Armstrong's conscience cannot allow him to remain silent in the face of such lies, this court in the enforcement of its order will have to jail him for the act of standing up and speaking his convictions, whether the court considers him to be mad or not. It is inconceivable that in our democratic society the Government will enforce a religious edict by jailing a citizen who dares to speak out against it.

V. THE INJUNCTION PREVENTS ARMSTRONG FROM DEFENDING HIMSELF IN OTHER LITIGATION WITH CSI.

On October 10, 1995, in *In re Gerald Armstrong*, U.S. Bankruptcy Court for the Northern District of California, No. 95-10911, and *Church of Scientology International v. Gerald Armstrong*, U.S. Bankruptcy Court for the Northern District of California, A.P. 95-1164, the Court ordered "all direct

testimony at trial shall be in the form of declarations." (Exhibit E [Court's Order filed October 10, 1995] to Greene Decl.) The subject matter of that proceeding is the same as in the instant proceeding (Exhibit F & G [Armstrong's Answer and Order filed October 10, 1995 denying Scientology's motion to strike said Answer] to Greene Decl.) Thus, the instant injunction precludes Armstrong from representing himself in that litigation because he cannot talk to people about Scientology in order to obtain declarations in his own defense. [11] Such is a denial of Armstrong's First Amendment right to redress, Fifth and Fourteenth Amendment rights to due process and to a fair trial, and his Sixth Amendment rights to counsel and to confrontation.

V. THE SEALING ORDER IS UNINTELLIGIBLE AND UNENFORCEABLE

In an act of supreme irony, the court ordered all publicly filed documents in this case possessed by Mr. Greene, Armstrong's counsel "not be distributed to third parties." The public file in this case has been open for public review for almost 4 years as it should be. In Armstrong's own prior litigation, the Court of Appeal held

> "there can be no doubt that court records are public records, available to the public in general ... unless a specific exception makes specific records non public. [Citation.] To prevent secrecy in public affairs public policy makes public records and documents available for public inspection by ... members of the general public ... [Citations.] Statutory exceptions exist [citations], as do judicially created exceptions, generally temporary in nature, exemplified by such cases as Craemer, supra, and Rosato v. Superior Court (1975) 51 Cal.App.3d 190 ..., which involved temporary sealing of grand jury transcripts during criminal trials to protect defendant's right to a fair trial free from adverse advance publicity. Clearly, a court has inherent power to control its own records to protect rights of litigants before it, but, 'where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed. ... [¶] If public court business is conducted in private, it becomes impossible to expose corruption, incompetence, inefficiency, prejudice and favoritism. For this reason traditional Anglo-American jurisprudence distrusts secrecy in judicial proceedings and favors a policy of maximum access to proceedings and records of judicial tribunals. Thus, in Sheppard v. Maxwell (1966) 384 U.S. 333, 350, the court said it is a vital function of the press to subject the judicial process to 'extensive public scrutiny and criticism.' And the California Supreme Court has said, 'it is a first principle that the people have the right to know what is done in their courts.' (In re Shortridge (1893) 99 Cal. 526, 530) Absent strong countervailing reasons, the public has a legitimate interest and right of general access to court records ...."

Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1068.

There is simply no basis for this Court to order Armstrong's counsel to become subject to Armstrong's agreement. Indeed, since the order is the judicial enforcement of an agreement, said order violates Rule of

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[11] The allegations set forth in Armstrong's Answer stand, Scientology's motion to strike having been denied on October 6, 1995. (Exhibit G to Greene Decl.)

Professional Responsibility 1-500. [12] He has written all the legal arguments in this case. He has represented numerous other former Scientologists from whom he has obtained many Scientology materials and in the course of whose representation he has obtained copies of all documents filed in the instant litigation.

VI. TO THE EXTENT THAT THE AGREEMENT IS IN RESTRAINT OF TRADE, IT IS INVALID.

The enforcement of the agreement prevents Armstrong from working as a paralegal for Ford Greene. Such is an unreasonable restraint of trade.

Business and Professions Code section 16600 provides that, subject to exceptions contained in its chapter, "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind to that extent is void." The Restatement 2d, Contracts § 186 states: "(1) A promise is unenforceable on grounds of public policy if it is unreasonably in restraint of trade. (2) A promise is in restraint of trade if its performance would limit competition in any business or restrict the promisor in the exercise of a gainful occupation."

Although covenants not to compete may be enforceable if for a limited time period, such a covenant in perpetuity is not enforceable. Thus, the lifetime prohibition of Armstrong working as a paralegal is void. [13]

VII. THE HELLER AND LONG DECLARATIONS RAISE TRIABLE ISSUES REGARDING THE DEFENSE OF UNCLEAN HANDS

Assuming without conceding that as a matter of contractual interpretation CSI was not required to maintain silence as to Armstrong, its actions are such as to create a triable issue regarding the defense of unclean hands. (Separate Statement at ¶ 105, 130) Traditionally, the doctrine of unclean hands is invoked when one seeking relief in equity has violated conscience, good faith or other equitable principles in his prior conduct. Accordingly, one who violates his contract cannot have recourse to equity to support that violation. *Fibreboard Paper Prod. Corp. v. East Bay Union* (1964) 227 Cal.App.2d 675, 727. It is a proper defense in a legal action as well as in equity *Id.* at 728.

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[12] Rule 1-500 (A) states: "A member shall not be a party to or participate in offering or making an agreement, whether in connection with the settlement of a lawsuit or otherwise, if the agreement restricts the right of the member to practice law ...."

[13] The preliminary injunction in this case allowed for Armstrong to perform routine clerical tasks for Greene, even on Scientology cases, provided that the same did not involve the communication of knowledge that Armstrong obtained in Scientology. Scientology's order to show cause re contempt against Armstrong for answering the telephone, relaying messages and executing proofs of service in Scientology litigation handled by Greene did not violate the preliminary injunction. (Armstrong's Separate Statement at ¶¶ 23, 37, Exhibits 1 (J)(L).)

> Any unconscientious conduct in the transaction may give rise to the defense. [Citations.] This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. The doctrine is rooted in the historical concept of a court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abettor of inequity.'"

Burton v. Sosinsky (1988) 203 Cal.App.3d 562, 573-574.

> The equitable principles underlying the clean hands doctrine do not require a finding that Pond was guilty of perjury, concealment or other illegal conduct, '[f]or it is not only fraud or illegality which will prevent a suitor from obtaining equitable relief. *Any unconscientious conduct* upon his part which is connected with the controversy will repel him from the forum whose very foundation is good conscience.

Pond v. Insurance Co. of America (1984) 151 Cal.App.3d 280, 291. The application of the doctrine is primarily a question of fact. *Fibreboard*, 227 Cal.App.2d at 726-727. The defense applies only if the inequitable conduct occurred in a transaction directly related to the matter before the court and affects the equitable relationship between the litigants. *California Satellite Systems, Inc. v. Nichols* (1985) 170 Cal.App.3d 66, 70. The unconscionable conduct must be of such a nature that it would, if permitted to go unnoticed, result in prejudice to the other party. *Soon v. Beckman* (1965) 234 Cal.App.2d 33, 36.

Based on Heller's statements as to the intention of the parties on one hand (Separate Statement ¶ 101, 102), and Scientology's post settlement references to and characterizations of Armstrong as a liar, agent provocateur, and contemnor on the other (*Id.* at ¶105), it is clear that Armstrong has raised a factual issue as to his defense of unclean hands. Scientology cannot state out of one side of its mouth that the keep quiet provisions were mutual and state out of the other side of its mouth the ways in which it says Armstrong is a bad man.

VIII. CONCLUSION

Based on the foregoing points and authorities, defendant Armstrong respectfully submits that his motion for reconsideration should be granted.

DATED: November 16, 1995

HUB LAW OFFICES

By: _____
FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

DECLARATION OF FORD GREENE

I, FORD GREENE, declare:

1. I am an attorney licensed to practice law in the courts of the Sate of California and am the attorney of record for Gerald Armstrong, defendant herein.

2. I personally participated in a hearing before the Department 1 of the above Court on Scientology's3. motion for summary adjudication on its 20th cause of action for a permanent injunction on October 6, 1995. During that hearing I was cut off by the court and prevented from making the appellate record necessary for the proper representation of defendant. A true and correct copy of the transcript of said hearing is attached hereto as Exhibit A.

3. I represent Lawrence Wollersheim in *Wollersheim v. Church of Scientology of California*, Los Angeles County Superior Court, Case No. C 332 027. Mr. Wollersheim is a defendant in an action entitled *Religious Technology Center v. F.A.C.T.NET, INC.; Lawrence Wollersheim and Robert Penny*, United States District Court for the District of Colorado, Case No. 95-K-2143. A true and correct copy of the Memorandum Opinion of the Court, filed therein October 3, 1995, is attached hereto as Exhibit B.

4. I represent Uwe Geertz who was a defendant in a defamation action that Scientology dismissed on the eve of trial in the Central District of California in Church of Scientology International v. Fishman, No. CV 91-6426 HLH (Tx) C.D. Cal which litigation arose out of certain statements attributed to Dr. Geertz in the Time Magaize article entitled "Scientology: The Cult of Greed" published May 6, 1991. A true and correct copy of the Opinion and Order filed on November 14, 1995, in *Church of Scientology International v. Time Warner, Inc; Time Inc. Magazine Company; and Richard Behar*, United States District Court, Southern District of New York is attached hereto as Exhibit C.

5. A true and correct copy of the Time Magaize article entitled "Scientology: The Cult of Greed" published May 6, 1991 in attached hereto as Exhibit D.

6. In *In re Gerald Armstrong*, U.S. Bankruptcy Court for the Northern District of California, No. 95-10911, and *Church of Scientology International v. Gerald Armstrong,* U.S. Bankruptcy Court for the Northern District of California, A.P. 95-1164 an order filed October 10, 1995, issued from the U.S. Bankruptcy court in litigation between the same parties herein. A true and correct copy of said order is

L. BARTILSON 213 953-3351 F. GREENE 456-5318 A. WILSON 954-0938

TIME: 9:00 DATE: DECEMBER 1, 1995 DEPT: 1

JUDGE: GARY W. THOMAS REPORTER: E. PASSARIS CLERK: C. SOTELO

CASE NO: 157680 TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. ARMSTRONG

DEFENDANT'S MOTION

THE MOTION OF DEFENDANT GERALD ARMSTRONG FOR RECONSIDERATION IS DENIED. AS WILL BE SHOWN, NONE OF DEFENDANT'S ARGUMENTS MEET THE REQUIREMENTS OF CODE OF CIVIL PROCEDURE SECTION 1008, SUBDIVISION (a).

ARGUMENT 1: "THE COURT MUST CONSIDER THE HELLER DECLARATION WHICH RAISES TRIABLE ISSUES AS TO WHETHER THE AGREEMENT WAS INTEGRATED AND AS TO THE PARTIES INTENT THAT THE GAG PROVISIONS WERE RECIPROCAL" - IT IS NOT SUFFICIENT FOR PURPOSES OF A RECONSIDERATION MOTION TO SIMPLY ARGUE THAT THE COURT MISINTERPRETED THE LAW. (*GILBERD V. AC TRANSIT* (1995) 32 CAL.APP.4TH 1494, 1500.) DEFENDANT'S PURPORTED "NEW OR DIFFERENT" EVIDENCE IS NOT "NEW OR DIFFERENT" IN THAT IT IS MERELY CUMULATIVE OF ALL OF THE OTHER EVIDENCE DEFENDANT HAS SUBMITTED IN THIS CASE TO SHOW THAT THE NATURE OF SCIENTOLOGY CONTINUES TO BE RECOGNIZED AS A LIVE PUBLIC CONTROVERSY AND THAT SCIENTOLOGY INTIMIDATES AND CRITICIZES ITS MEMBERS AND CRITICS.

ARGUMENT 2: "THE INJUNCTION VIOLATES THE FIRST AMENDMENT - THIS AGAIN IS SIMPLY AN ARGUMENT THAT THE COURT PREVIOUSLY MISINTERPRETED THE LAW. THE PURPORTED "NEW" EVIDENCE IS IRRELEVANT TO WHETHER THE INJUNCTION VIOLATES THE FIRST AMENDMENT.

ARGUMENT 3: "THE INJUNCTION PREVENTS ARMSTRONG FROM DEFENDING HIMSELF IN OTHER LITIGATION WITH CSI" - THIS IS NOT "NEW OR DIFFERENT" SINCE PLAINTIFF SOUGHT THE OBJECTED TO PROHIBITION IN ITS MOTION SEEKING A PERMANENT INJUNCTION. THE BANKRUPTCY ORDER IS NOT "NEW OR DIFFERENT" SINCE, EVEN IF THE BANKRUPTCY COURT HAD NOT DIRECTED THAT TESTIMONY BE VIA DECLARATION, DEFENDANT WOULD HAVE HAD THE SAME PURPORTED PROBLEM IN OBTAINING DIRECT TESTIMONY (I.E., HE WOULD HAVE BEEN UNABLE TO TALK TO PEOPLE ABOUT SCIENTOLOGY IN ORDER TO OBTAIN DIRECT TESTIMONY IN HIS OWN DEFENSE). EVEN IF THE COURT CONSIDERS THIS ARGUMENT, IT HAS NO MERIT IN THAT DEFENDANT CAN ASK PEOPLE TO SUBMIT DECLARATIONS WITHOUT DISCUSSING HIS VIEWS AND BELIEFS ABOUT PLAINTIFF.

(CONTINUED ON PAGE 3-A-1

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CASE NO: 157680 TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. ARMSTRONG

ARGUMENT 4: "THE SEALING ORDER IS UNINTELLIGIBLE AND UNENFORCEABLE" - AGAIN, THIS IS NOT "NEW OR DIFFERENT" SINCE PLAINTIFF SOUGHT THIS RELIEF WHEN IT SOUGHT THE PERMANENT INJUNCTION.

ARGUMENT 5: "TO THE EXTENT THE AGREEMENT IS IN RESTRAINT OF TRADE, IT IS INVALID" - AGAIN, THIS IS NOT "NEW OR DIFFERENT" SINCE THE SAME HELD TRUE AT THE TIME PLAINTIFF SOUGHT THE PERMANENT INJUNCTION. IN ANY EVENT, THE INJUNCTION DOES NOT PRECLUDE DEFENDANT FROM WORKING FOR HIS ATTORNEY AS A PARALEGAL. DEFENDANT CITES NO AUTHORITY THAT THE INJUNCTION IS INVALID WHERE IS ONLY LIMITS THE CASES UPON WHICH HE CAN WORK.

ARGUMENT 6: "THE HELLER AND LONG DECLARATIONS RAISE TRIABLE ISSUES REGARDING THE DEFENSE OF UNCLEAN HANDS" - DEFENDANT POINTS ONLY TO FACTS AND EVIDENCE SET FORTH IN HIS PREVIOUS SEPARATE STATEMENT, THUS THERE IS NOTHING "NEW OR DIFFERENT" TO SUPPORT THIS ARGUMENT.

PLAINTIFF'S MOTION

PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION IS DENIED; IN ALL OTHER RESPECTS, THE MOTION IS GRANTED. AS TO THE FIRST CAUSE OF ACTION OF DEFENDANT'S CROSS-COMPLAINT, PLAINTIFF HAS FAILED TO MEET ITS BURDEN OF SHOWING THAT THE COURT HAS DETERMINED THE ENFORCEABILITY OF PARAGRAPHS 7I AND 18E OF THE SETTLEMENT AGREEMENT. THE MOTIONS DIRECTED AT THE FOURTH, SIXTH, THIRTEENTH, SIXTEENTH, SEVENTEENTH AND NINETEENTH CAUSES OF ACTION ONLY INVOLVED PARAGRAPH 7D OF THE SETTLEMENT AGREEMENT. (SEE P'S EXS. RJN C AND D.) DEFENDANT DOES NOT DISPUTE THAT "PARAGRAPHS 4A AND 4B CONCERN AN APPEAL WHICH HAS ALREADY BECOME FINAL, AND AS TO WHICH NO RIGHTS, DUTIES OR OBLIGATIONS COULD BE ENFORCED IN THE FUTURE." (SEE P'S FACT 3.) THE ORDER OF PERMANENT INJUNCTION DID NOT FIND VIOLATIONS OF PARAGRAPHS 7I AND 18E. (SEE P'S EX. RJN E, P. 2, ¶4.)